



March 3, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: Notice of Ex Parte Meeting
ET Docket No. 04-352

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this is to notify you that I had separate meetings with Sam Feder, Legal Advisor to Commissioner Martin; John Branscome, Acting Legal Advisor to Commissioner Abernathy; Paul Margie, Legal Advisor to Commissioner Copps and Barry Ohlson, Senior Legal Advisor to Commissioner Adelstein on March 2, 2005, regarding the above captioned proceeding in which the Multi-band OFDM Alliance Special Interest Group ("MBOA-SIG") requests waiver of the Commission's rules for ultra-wideband ("UWB"). Consistent with Motorola's comments in this proceeding, Motorola continues to oppose grant of the requested waiver.

The following points in support of Motorola's position were discussed:

- 1) **The requested waiver is a *de facto* rule change.** The MBOA-SIG's waiver request is a *de facto* rule change that would allow multi-band OFDM products to operate with nearly 6 dB more power than the Commission's rules currently allow. Grant of this waiver would be a significant and unwarranted deviation from the approach taken by the Commission in its initial development of rules for UWB. In adopting initial rules for UWB in April 2002, the Commission recognized the need for a cautious approach to guard against interference to licensed or higher priority services.¹ A year later the Commission affirmed this approach given the continued lack of experience with UWB devices.² In December last year, less than three months ago, the Commission once again stated that "we are reluctant to change the existing UWB rules until we have more experience with UWB devices."³ There has been no significant new experience with UWB devices in the last three months and no information in the record of this proceeding that would warrant a Commission grant of this *de facto* rule

¹ *In the matter of Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems*, ET Docket 98-153, *First Report and Order*, FCC 02-48, released April 22, 2002, at ¶62.

² *In the matter of Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems*, ET Docket 98-153, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 03-33, released March 12, 2002, at 1.

³ *In the matter of Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems*, ET Docket No. 98-153, *Second Report and Order and Second Memorandum Opinion and Order*, FCC 04-285, released December 16, 2005 at ¶1.



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change. In fact, the record of the proceeding contains significant concern regarding the potential for greater interference as a result of the changes sought by the MBOA-SIG.

- 2) **Time averaging for UWB was considered and rejected by the Commission.** In creating rules for UWB the Commission specifically rejected the type of averaging now requested by the MBOA-SIG. The Commission adopted two rule sections to ensure that such averaging was not used. First, Section 15.505(a) of the Commission's rules specifies that the averaging for pulsed emissions permitted by Section 15.35(c) does not apply for UWB devices. Secondly, the Commission adopted the rule in question, Section 15.521(d), which states that, "If pulse gating is employed where the transmitter is quiescent for intervals that are long compared to the normal pulse repetition interval, measurements shall be made with the **pulse train gated on**" [Emphasis added]. Because the Commission considered this case in a rule making proceeding, it is inappropriate to now adopt a *de facto* change to those rules outside of a rule making proceeding.
- 3) **Failure to grant the waiver will not prevent deployment of the MBOA-SIG technology.** The issue at hand is not whether the proposed technology can be deployed. The issue is only whether the technology must comply with Commission rules, or whether it can be deployed at an advantage to other technologies which do comply with the Commission's rules. This fact is abundantly clear from a statement of the CEO of Staccato Communications, Inc., an MBOA-SIG member company, that rejection of the waiver request by the FCC would have no effect on product timelines.⁴
- 4) **Favorable consideration of the waiver request would be premature without additional information.** As noted above, the Commission has stated a number of times that no change in the UWB rules is warranted without additional experience. While no additional experience or information has been provided since December when the Commission last made that statement, it is likely that additional test information will be available in the near future from a highly accredited and impartial testing laboratory. The Institute for Telecommunications Services, the laboratory arm of the National Telecommunications and Information Administration has undertaken a comprehensive testing program to evaluate the risk of interference from UWB, including the type of system proposed by the MBOA-SIG.⁵ Those tests, and the valuable information that would result, are not yet complete. Without such information, there is no basis for the Commission to deviate from its previously stated position that no change to the UWB rules is warranted.

Given evidence in the record of this proceeding that the changes proposed by MBOA-SIG would create a greater potential for interference, and the ongoing testing by the NTIA ITS laboratory, it would be irresponsible for the Commission to grant the requested waiver at this time. Accordingly, Motorola urges the Commission to maintain the current rules for UWB and to not allow those rules to be eroded through *de facto* changes or waivers absent compelling evidence.

⁴ See Reply Comments of Motorola at 2.

⁵ See the ITS website at http://www.its.bldrdoc.gov/home/programs/uwb_interference/



Please contact me at (202) 371-6953 if you have any questions or need additional information.

Respectfully submitted,

/s/

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